

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C. (A) .Nos.734 to 741 of 2007

Commissioner of Income Tax
Madurai. Appellant in
all the appeals

Vs.

M/s. Siva Springs,
4, Industrial Estate,
K.Pudur, Madurai. Respondent in
all the appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 5.8.2005 in ITA Nos.968 to 975/Mds/1999 for the assessment years 1986-87 to 1993-94 respectively and against the Order of the Commissioner of Income Tax [appeals] in ITA.No.1042/98-99 and 1030 to 1035/98-99 and 762/98-99 dated 26.02.1999 and against the order of the Assessment year 1986 to 1994 dated 27.03.1998.

For Appellant : Mrs. Pushya Sitaraman
Sr. Standing Counsel

J U D G M E N T
(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal dated 5.8.2005 in ITA Nos.968 to 975/Mds/1999 for the assessment years 1986-87 to 1993-94 respectively.

2. The Revenue is the appellant. The relevant assessment years are 1986-87 to 1993-94. The assessee claimed deduction on account of payment to one Balaji Siva, a sister concern towards packing and forwarding charges. During the re-assessment under Section 147 of the Income-tax Act (for brevity "the Act"), the Assessing Officer found that Balaji Siva was not an individual, but a unit of Balaji Barium Products Private Limited and its Managing Director is also related to all the partners of the assessee firm and on that ground, he came to the conclusion that the

amount had been paid by the assessee firm not for any real services rendered by the said Balaji Siva, but to reduce the profits of the assessee firm, the assessee had set it off against the accumulated losses of Balaji Siva and accordingly, disallowed the payment of commission in respect of the assessment years 1986-87 to 1993-94 by even dated orders dated 27.3.1998. Against the said assessment orders dated 27.3.1998, the assessee preferred appeals before the Commissioner of Income-Tax (Appeals), who by common order dated 26.2.1999 found that the sister concern had rendered the services and therefore the commission paid by the assessee firm to the sister concern ought to have been allowed, but, since there is close relationship between the Managing Director of the sister concern and the partners of the assessee firm, only 10% of the payment was treated as excessive and allowed 90% of the payment. Against that order, the Revenue preferred further appeals before the Income-tax Appellate Tribunal. The Appellate Tribunal following its earlier order with respect to the assessment year 1994-95 in the assessee's own case, which remain unchallenged and therefore become final, dismissed the appeals.

3. Aggrieved by the same, the Revenue has preferred the above appeals raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in merely following its own earlier order, and dismissing the appeal without considering any of the grounds raised by the Revenue?

2. Whether on the facts and in the circumstances of the case, the Tribunal had any basis to hold that the amounts paid as commission to a sister concern were allowable as a business expenditure?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in not going into the facts of whether any service had been actually rendered by the recipient to justify terming the payment as a business expenditure?

4.1. It is not in dispute that the Revenue allowed the services charges paid by the assessee firm to the sister concern for the assessment year 1994-95 and the same remain unchallenged.

4.2. Under the identical circumstances, a Division Bench of this Court in Commissioner of Income-tax v. V.S.T. Motors P. Ltd. (226 ITR 155), held that the commission paid by the assessee company to its sister concern for the services rendered by it was allowable as deduction and the same cannot be interfered with.

4.3. Again in Commissioner of Income-tax v. Print Systems and Products (285 ITR 337) wherein the commission paid to a sister concern was found to be reasonable by the Commissioner of the Income-tax (Appeals) and the Income-tax Appellate Tribunal, this Court held that no part of the commission could be disallowed and thus refused to interfere with.

4.4. As all the three substantial questions of law raised in the present appeals revolve on the pivotal issue as to the finding and decision in allowing service charges paid by the assessee firm to its sister concern for the assessment year 1994-95 and no material has been produced before us to contradict the said finding and decision, we have no other option except to follow the ratio laid down in the decisions referred to above.

Finding, therefore, no substantial question of law that arises for our consideration, these appeals are dismissed. No costs. M.P.Nos.1 of 2007 are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras "C" Bench, Chennai.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

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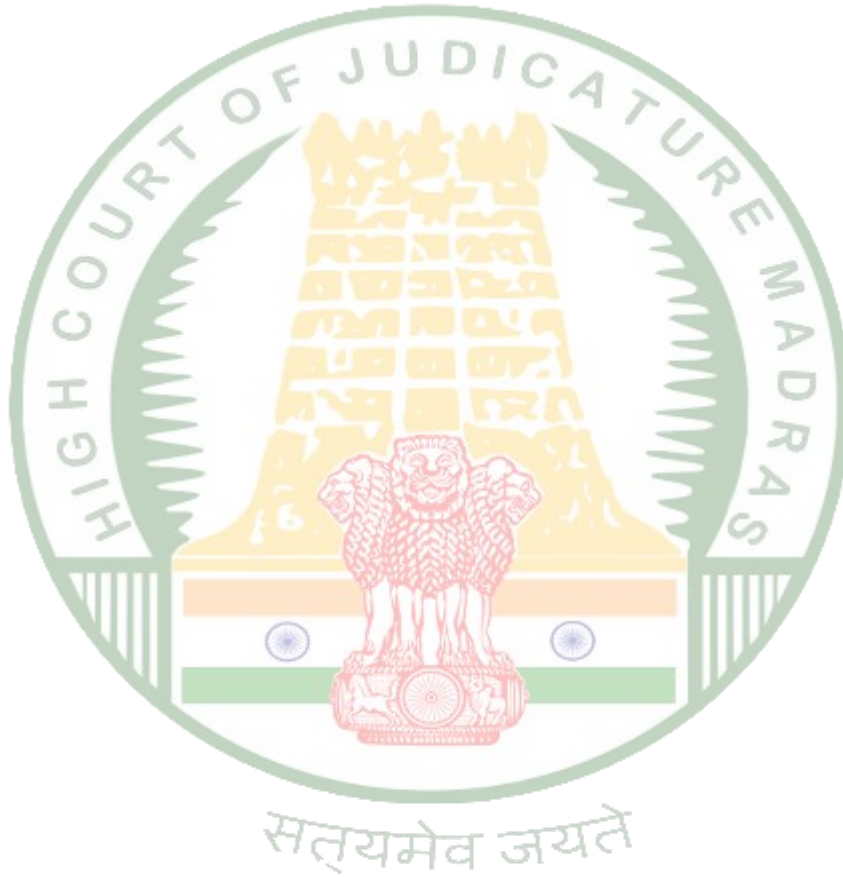
3.The Commissioner of Income
Tax (Appeals), Madurai.

4.The Income-tax Officer
Ward I(8), Madurai.

+ 1 CC To Ms.Pushya Sitaraman, Advocate SR NO.26714

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